

IN THE
Supreme Court of the United States

October Term, 1953
No. _____, Original

STATE OF RHODE-ISLAND AND PROVIDENCE PLANTATIONS,
Complainant,
vs.

STATE OF LOUISIANA, STATE OF FLORIDA, STATE OF
TEXAS, STATE OF CALIFORNIA, GEORGE M. HUMPHREY,
DOUGLAS MCKAY, ROBERT B. ANDERSON, IVY BAKER
PRIEST,
Defendants.

**Objections of the States of California and Florida to
Motion of the State of Rhode Island and Provi-
dence Plantations for Leave to File Complaint.**

EDMUND G. BROWN,
Attorney General of California;

WILLIAM V. O'CONNOR,
Chief Deputy Attorney General;

EVERETT W. MATTOON,
Assistant Attorney General;

GEORGE G. GROVER,
Deputy Attorney General,
600 State Building,
Los Angeles 12, California,

*Attorneys for the State of
California.*

RICHARD W. ERVIN,
Attorney General of Florida;

HOWARD S. BAILEY,
Assistant Attorney General;

FRED M. BURNS,
Assistant Attorney General;

JOHN D. MORIARTY,
Special Assistant Attorney General,
State Capitol,
Tallahassee, Florida,

*Attorneys for the State of
Florida.*

January 26, 1954.

SUBJECT INDEX

	PAGE
Statement	1
Objections	2
Argument	3
Conclusion	8

TABLE OF AUTHORITIES CITED

CASES	PAGE
Alabama v. Texas et al., No., Original, 1953 Term.....	3
Arizona v. California, 298 U. S. 558.....	2
C. & S. Air Lines v. Waterman Corp., 333 U. S. 103.....	5
Doe v. Braden, 16 How. 635.....	5
Georgia v. Pennsylvania R. Co., 324 U. S. 439.....	2
United States v. Curtiss-Wright Corp., 299 U. S. 304.....	5
Ware v. Hylton, 3 Dall. 199.....	5

STATUTES

Act of April 8, 1812 (2 Stats. 701).....	5
Act of February 20, 1811 (2 Stats. 641).....	5
Act of June 25, 1868 (15 Stats. 73).....	5
Florida Constitution of February 25, 1868.....	5
Public Law 31, 83d Cong., 1st Sess. (67 Stats. 29).....	1, 2, 3, 4, 5, 6
Texas Act of December 19, 1836 (1 Laws of the Republic of Texas (1838) 133).....	5
United States Constitution, Art. IV, Sec. 3, Clause 2.....	3, 7

TEXTBOOKS

99 Congressional Record, pp. 2716, 2717, 2728, 2797.....	4
United States Supreme Court Bulletin, 1953-1954, pp. 307-2.....	2

TREATY

Treaty Between the United States and Great Britain, 1818.....	3, 4, 6
---	---------

IN THE
Supreme Court of the United States

October Term, 1953

No., Original

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS,
Complainant,

vs.

STATE OF LOUISIANA, STATE OF FLORIDA, STATE OF
TEXAS, STATE OF CALIFORNIA, GEORGE M. HUMPHREY,
DOUGLAS MCKAY, ROBERT B. ANDERSON, IVY BAKER
PRIEST,

Defendants.

**Objections of the States of California and Florida to
Motion of the State of Rhode Island and Providence
Plantations for Leave to File Complaint.**

Statement.

On December 21, 1953, the State of Rhode Island and Providence Plantations (hereinafter called "Rhode Island") filed with this Court a motion for leave to file a complaint against the States of Louisiana, Florida, Texas, and California and George M. Humphrey, Douglas McKay, Robert B. Anderson, and Ivy Baker Priest. The motion was accompanied by a supporting brief and a copy of the proposed complaint. In the complaint, Rhode Island prayed for a declaration that Public Law 31, 83d Cong., 1st Sess., 67 Stat. 29, is unconstitutional and void, and for an injunction restraining defendant States from asserting jurisdiction in offshore waters, restraining the individual defendants from acquiescing in such asser-

tions, and restraining the individual defendants from making payment of certain funds to the defendant States.

Subsequently defendants filed motions for leave to file objections to Rhode Island's motion for leave to file a complaint. On January 18, 1954, this Court set Rhode Island's motion for argument at the foot of the call for Monday, February 1, 1954. 1953-54 U.S. Sup. Ct. Bull. 307-2.

The following objections are presented jointly by California and Florida. These objections are directed solely to Rhode Island's motion for leave to file a complaint and are limited to jurisdictional arguments which make it "plain that no relief may be granted in the exercise of the original jurisdiction of this Court." *Georgia v. Pennsylvania R. Co.*, 324 U.S. 439, 445 (1945); *Arizona v. California*, 298 U.S. 558, 559 (1936). For that reason, no argument on the merits is being submitted at this time.

Objections.

1. The complaint does not state a case or controversy within the jurisdiction of this Court in that:

(a) Rhode Island has not been injured by the passage of Public Law 31.

(b) Rhode Island does not have standing to challenge the constitutionality of Public Law 31 on behalf of her citizens.

(c) The validity of Public Law 31 is a political and not a justiciable question.

(d) Rhode Island has no standing to challenge the alleged boundary claims of Louisiana, Florida, and Texas.

2. The United States is an indispensable party and has not consented to be sued.

Argument.

The complaint offered by Rhode Island in this case is similar to that offered by the State of Alabama on September 26, 1953, in *Alabama v. Texas et al.*, No., Original, 1953 Term. The motions of Alabama and Rhode Island for leave to file their complaints have been set for oral argument before the Court at the same time. The States of California and Florida jointly filed objections, together with a supporting brief, to Alabama's motion for leave to file a complaint, and these objections to the filing of Alabama's complaint are equally applicable to the complaint of the State of Rhode Island. To avoid repetition, therefore, California and Florida respectfully ask that the argument in support of their objections to Alabama's motion be herein incorporated by reference in support of the objections set forth above.

The brief in support of Rhode Island's complaint contains only two arguments not advanced by Alabama, namely: (A) that Public Law 31 may operate as a renunciation by the United States of its obligations under the Treaty of 1818, and (B) that the submerged lands do not constitute property within the meaning of Article IV, Section 3, Clause 2 of the Constitution.

A

Rhode Island argues that Louisiana, Florida, and Texas "propose to rely on Public Law 31 to extend their boundaries nine nautical miles into the Gulf of Mexico" and that such action would "operate as a renunciation" by the United States of its obligations, under the Treaty of 1818 with Great Britain, to recognize the three-mile territorial limit. (Br., Points I and IV, pp. 12, 13, 18, 33,

34.) Rhode Island contends that, as a result, Canada and Newfoundland will be released from their corresponding treaty obligations and will take retaliatory measures against the New England fishing industry which are "bound to have deleterious effect on the economy of Rhode Island." (Br. pp. 13, 34, 35.) Examination of these contentions will make it clear that they do not give Rhode Island standing to attack the constitutionality of Public Law 31.

First, Public Law 31 does not authorize the defendant States or any State to extend its boundaries beyond three miles. This was fully demonstrated in the brief of California and Florida (pp. 10-11) and the brief of the individual defendants (pp. 31-32) in support of the objections to Alabama's motion for leave to file a complaint. As pointed out in those briefs, Public Law 31 vests in defendant States no more than the submerged lands within the three-mile belt or within those States' historic legal boundaries. If any State has a claim that her historic legal boundary is actually more than three miles seaward, the Act does not ratify or in any way determine the merits of that claim. The debate in the Senate makes it clear that it was the firm purpose of Congress neither to prejudice nor to aid the proof of any such claim which might be made. 99 Cong. Rec. 2716, 2717, 2728, 2792. Thus, nothing in Public Law 31 remotely conflicts with the obligations of the United States under the Treaty of 1818 or the Treaty of 1924.

Second, the claims of Louisiana, Florida, and Texas to more than three miles in the Gulf of Mexico antedate the Submerged Lands Act and are based on long-standing constitutional and statutory provisions. Louisiana's

claim goes back to her 1811 act of admission,¹ Texas' to an 1836 act of the Republic of Texas,² and Florida's to her 1868 Constitution.³ Neither Canada nor Newfoundland has ever asserted that the claims made by these States affected the obligations under the Treaties. The situation is not altered by the passage of Public Law 31. Thus, there is no foundation for the prediction that Rhode Island will be injured by reason of reprisals by foreign nations.

Third, even if we accept the untenable assumption that Public Law 31 will be regarded by Canada as a renunciation by the United States of the Treaty of 1818, Rhode Island would have no cause of action against these defendants. Indeed, these circumstances would present no justiciable controversy. It has long been well settled that questions regarding the making, effect, or violation of a treaty are political and not justiciable in nature. *Ware v. Hylton*, 3 Dall. 199, 260 (1796); *Doe v. Braden*, 16 How. 635, 656 (1853). This rule is a part of the broad principle that decisions in the field of foreign policy "are wholly confided by our Constitution to the political departments of the government, Executive and Legislative." *C. & S. Air Lines v. Waterman Corp.*, 333 U.S. 103, 111 (1948); *United States v. Curtiss-Wright Corp.*, 299 U.S. 304, 319-321 (1936).

¹See Act of Congress of February 20, 1811, 2 Stat. 641; Act of Congress of April 8, 1812, 2 Stat. 701, 702.

²Texas Act of December 19, 1836, 1 Laws of the Republic of Texas (1838) 133.

³Florida Constitution of February 25, 1868; see Act of Congress of June 25, 1868, 15 Stat. 73.

Any effect Public Law 31 might possibly have on the Treaty of 1818 and the relations between the United States and the British Commonwealths clearly lies within the domain of international relations. The controversy between the United States and Great Britain over the North Atlantic fisheries began even before the Treaty of 1818 and has continued intermittently almost to the present time. This long-standing controversy, which was the subject of the famous North Atlantic Coast Fisheries Arbitration of 1911, is a classic example of the problems which arise between nations. The responsibility for dealing with these problems lies exclusively with the political departments of the Government.

From Rhode Island's own arguments it is apparent that she has predicated her complaint upon an alleged threat of injury which, if it exists at all, lies wholly within the domain of international relations. For example, Rhode Island states:

"The interest of Rhode Island in preventing large scale renewal of earlier troubles in these northern fisheries can only be protected by bringing this suit."

Br. p. 13; see also p. 34.

The precedents cited above make it clear, however, that the alleged interest of Rhode Island in preventing a renewal of the international controversy over the North Atlantic fisheries can be protected only by the political branches of the Government in the conduct of international relations and not by court action. Action in the

field of foreign affairs by the political departments of the Government may not be controlled, and is not subject to review, in a suit between States.

B

The other argument made by Rhode Island which was not advanced in the Alabama case is that the submerged lands do not constitute "property" within the meaning of Article IV, Section 3, Clause 2 of the Constitution. (Br., Point II, p. 20.) It is suggested that "there is no Federal 'property' to be disposed of" because the submerged lands "belong to the family of nations" (Br. pp. 22-23) and because the interest of the United States consists of "paramount rights" which cannot be transferred to the States. (Br. pp. 20, 27.)

This, of course, is an argument on the merits which it is not appropriate to consider at this jurisdictional stage of the case. However, it should be emphasized that the argument cannot conceivably confer any standing upon Rhode Island to bring this suit. If it is true that the United States has attempted to convey property belonging to the family of nations, that action would be subject to attack, if at all, only by a member of the family of nations and in the International Court of Justice. In such a controversy the State of Rhode Island, not being a national sovereign, would have no standing.

Similarly, if it is true that the United States has improperly transferred any of the rights of the United States to the coastal States, the only injury conceivably

suffered by Rhode Island (herself a coastal State) is one suffered in common with all people generally. As shown in our brief in opposition to Alabama's motion (pp. 5-19), a State has no right to challenge the constitutionality of Federal action under such circumstances.

Conclusion.

The States of California and Florida respectfully urge that the motion of the State of Rhode Island and Providence Plantations for leave to file a complaint should be denied.

Respectfully submitted,

EDMUND G. BROWN,
Attorney General of California;
WILLIAM V. O'CONNOR,
Chief Deputy Attorney General;
EVERETT W. MATTOON,
Assistant Attorney General;
GEORGE G. GROVER,
Deputy Attorney General,
600 State Building,
Los Angeles 12, California.

*Attorneys for the State of
California.*

RICHARD W. ERVIN,
Attorney General of Florida;
HOWARD S. BAILEY,
Assistant Attorney General;
FRED M. BURNS,
Assistant Attorney General;
JOHN D. MORIARTY,
Special Assistant Attorney General,
State Capitol,
Tallahassee, Florida.

*Attorneys for the State of
Florida.*

January 26, 1954.

Certificate of Service.

I, William V. O'Connor, certify that I have served a copy of the foregoing Objections upon each of the following named individuals by mailing a copy of said Objections to them, postage prepaid, at the following addresses:

Hon. William E. Powers
Attorney General of Rhode Island
Providence County Court House
Providence, Rhode Island

Hon. Fred S. LeBlanc
Attorney General of Louisiana
State Capitol
Baton Rouge, Louisiana

Hon. John Ben Shepperd
Attorney General of Texas
State Capitol
Austin, Texas

Hon. George M. Humphrey
Secretary of the Treasury
Department of the Treasury
Washington, D. C.

Hon. Douglas McKay
Secretary of the Interior
Department of the Interior
Washington, D. C.

Hon. Robert B. Anderson
Secretary of the Navy
Department of the Navy
Washington, D. C.

Hon. Ivy Baker Priest
Treasurer of the United States
Department of the Treasury
Washington, D. C.

Hon. Herbert Brownell, Jr.
Attorney General of the United States
Department of Justice
Washington, D. C.

And I further certify that I have served a copy of the Objections of the States of California and Florida to the Motion of the State of Alabama for leave to file a complaint in this Court in the case of *Alabama v. Texas et al.*, No., Original, October 1953 Term, upon the Attorney General of Rhode Island and Providence Plantations by mailing a copy of said Objections, postage prepaid, addressed as follows:

Hon. William E. Powers
Attorney General of Rhode Island
Providence County Court House
Providence, Rhode Island.

Done at Los Angeles, California, this 26th day of January, 1954.

WILLIAM V. O'CONNOR,
Chief Deputy Attorney General of California.